

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5856 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

P.T.ABRAHAM
VERSUS
STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner
MS SIDDHI TALATI for Respondent

Coram: S.K. Keshote,J
Date of decision: 15/09/1997

C.A.V. JUDGMENT

#. The petitioner, a Stenographer, Gr.II, in the Department of Health and Industries of the Government of Gujarat, filed this Special Civil Application and prayed for declaration that he was regularly appointed from 26th March 1962 as Stenographer Grade II (English) and as such entitled for all consequential benefits on the basis of his continuous officiation on the said post. Further prayer has been made for direction to the respondents to prepare the final seniority list of Stenographers Gr.I and II in the Secretariat Departments and to revise his seniority in both the aforesaid cadres.

#. The facts of the case are that the petitioner was appointed as English Stenographer, Gr.II, in the Secretariat, in the Department of Health & Industries, on being selected from the list of candidates received through the Employment Exchange. The petitioner joined the said post on 26th March 1962. One Shri R.S.Shah, Stenographer Gr.II (English), under the order dated 18.10.72, was absorbed with effect from 1.2.69 as a special case in relaxation of the recruitment rules under rule 16 of the Gujarat Civil Services (Classification & Recruitment) (General) Rules, 1967. The petitioner was given regular appointment on 16th April 1974. Thereafter, the first provisional seniority list of English Stenographers Gr.II was published vide Notification dated 18th April 1977 in which the petitioner was placed at Sr.No.16 treating him to be appointed from 1974. The petitioner's say is that he should have been placed at Sr.No.4 treating him to be appointed from 26th March 1962. The petitioner was then given promotion on the post of English Stenographer, Gr.I on 23rd August 1976 and thereafter he was confirmed vide order dated 28th April 1978 on the post of English Stenographer Gr.I with effect from 1.4.78. The selection grade scheme was introduced for Stenographers who were stagnated and as there was no avenue of promotion. The seniority list of English Stenographer, Gr.I was published vide Notification dated 19.5.82 showing therein the position as on 1.4.82, the petitioner has been placed at Sr.No.31. The grievance of the petitioner is that he was given seniority from 1974 and as such he could not get selection scale. Both the aforesaid seniority lists, as per the case of petitioner, were provisional but the same were operated for the purpose of selection scale.

#. Reply to the Special Civil Application has been filed by respondent and claim of the petitioner has been contested. The substance of defence taken by respondents, briefly stated, is as under:

(i) The petitioner has been regularly appointed on the post of Stenographer, Gr.II on 16th April 1974. Earlier appointment of petitioner was only urgent and temporary in nature;

(ii) The petitioner has never raised any objection against the provisional seniority lists of Stenographer, Grade II, & I;

(iii) Shri R.S.Shah had long service of 18 years and had crossed the upper age limit and therefore his services were regularized in consultation with GPSC.

#. The petitioner filed rejoinder to the reply and contended that he filed objections against the provisional seniority lists. It has further been stated that GPSC has not conducted any test in between the period 1966 and 1972. The petitioner passed the test of GPSC in March 1973 and obtained 80% marks. So far as Shri R.S.Shah is concerned, the petitioner stated that he was given promotion on the post of Stenographer Gr.I though he had not cleared the Grade II examination. The petitioner stated that Shri Shah has only been given a favour, otherwise he had no case whatsoever of extending the said benefit by resorting to provisions of Rule 16 of General Rules for regularization of his services.

#. The learned counsel for the petitioner, relying on the decision of Hon'ble Supreme Court in the case of G.P.Doval & Ors. v. Chief Secretary, Government of U.P. & Ors., reported in AIR 1984 SC 1527, contended that even if it is taken to be a case of temporary appointment of the petitioner, as it is valid by confirmation, the services rendered by petitioner as officiating appointment could not have been ignored for reckoning the length of continuous officiation for determining his place in seniority lists.

#. On the other hand, the learned counsel for respondents contended that appointments on the post of Stenographer Gr.II have to be made only on passing of examination to be held by GPSC. The appointment of the petitioner was temporary appointment till his services were regularized and as such, his past services could not be taken for the purpose of giving place in seniority list.

#. However, I do not consider it necessary to desist to the contentions raised by learned counsel for the parties. The provisional seniority list has been published in the year 1978 of Grade II Stenographers and in 1982 of Grade I Stenographers. Against the provisional seniority lists, as per petitioner's say, he made representations. Only in urgent and emergent circumstances, exercise could have been undertaken to act upon the provisional seniority list. Otherwise, provisional seniority list should have been finalized within a reasonable time and then only all other consequential promotions or grant of benefit of the selection scale should have been given on the basis of respective position of employees in the final lists. That course has not been adopted by respondents in the present case. However, it is also a fact that the petitioner has not approached to this Court within reasonable time. As observed by Their Lordships of the Hon'ble Supreme Court in the case of G.P.Doval & Ors. v. Chief Secretary, Govt. of U.P. & Ors. (supra), this petition may not be thrown only on the ground of delay and laches. But the fact remains that the provisional seniority list has not been finalized. A writ petition against the provisional seniority list is premature. A provisional seniority list is a tentative list subject to correction and the cause of action to challenge the same accrues only when the same is given final shape. There may be exceptional cases, where in emergency, adhoc and temporary promotions are made on the basis of provisional seniority list. In such cases there may be some semblance of justification on the part of petitioner to approach this Court, but not in all the cases. In the present case, it is really sorry state of affairs that none of the counsel for parties are able to make out a statement before this court as to whether the provisional seniority lists have been finalized or not. The seniority list of Stenographer Gr.II was tentative, but the petitioner has been given promotion on the basis of his position therein. So it has been acted upon in favour of petitioner also.

#. Taking into consideration the totality of the facts of this case, interest of justice will be met in case this Special Civil Application is disposed with directions to respondents to finalize the provisional seniority lists of Stenographers Gr.I & II, referred above, within a period of three months from the date of receipt of certified copy of this order, and if necessary after hearing the petitioner. In case the petitioner's position in these seniority lists is improved then he shall be entitled for all consequential benefits

following therefrom. In case, in the meanwhile, these lists have been finalized, then this exercise is not required to be undertaken and in that eventuality, this Special Civil Application shall stand dismissed as having become infructuous.

#. The Special Civil Application and Rule therein stand disposed of in aforesaid terms with no order as to costs.

.....

(sunil)